

STATE OF MICHIGAN  
IN THE SUPREME COURT

City of Mt. Pleasant,

Petitioner-Appellant,

Supreme Court No. 129453

vs.

Court of Appeals No. 253744

Michigan State Tax Commission,

Respondent-Appellee.

Michigan Tax Tribunal Nos. 191496,  
196247, 238596, 240992, 240993,  
240994, & 240995

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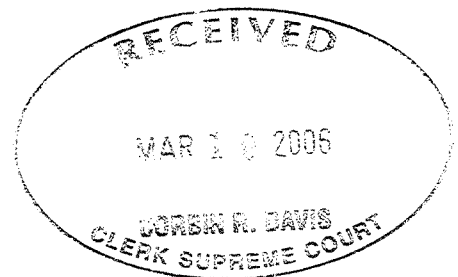
**BRIEF OF AMICUS CURIAE  
MICHIGAN MUNICIPAL LEAGUE LEGAL DEFENSE FUND  
IN SUPPORT OF CITY OF MT. PLEASANT**

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## **I. STATEMENT OF BASIS OF JURISDICTION**

Amicus Curiae Michigan Municipal League Legal Defense Fund accepts the Statement Regarding Appellate Jurisdiction of Petitioner-Appellant.

## **II. STATEMENT OF QUESTION PRESENTED**

**DID THE MICHIGAN TAX TRIBUNAL AND THE COURT OF APPEALS  
ERR IN HOLDING THAT MCL 211.7M DOES NOT EXEMPT  
PROPERTY OWNED BY A CITY FROM TAXATION?**

The Michigan Tax Tribunal answers "No."

The Michigan Court of Appeals answers "No."

Plaintiff- Appellant, the City of Mt. Pleasant answers "Yes."

Amicus Curiae, the Charter County of Wayne answers "Yes."

Amicus Curiae, the Michigan Municipal League Legal Defense Fund answers "Yes."

### **III. STATEMENT OF FACTS**

Amicus Curiae Michigan Municipal League Legal Defense Fund accepts the facts presented by Petitioner-Appellant.

LALIB:140262.2\107546-00006

#### IV. ARGUMENT

##### A. Introduction

Amicus Curiae, the Michigan Municipal League (the “Municipal League”), is a non-profit corporation created in 1899 to represent and advance the interests of cities and villages and to improve those municipal entities through educational programs and cooperative efforts. The Board of Directors of the Michigan Municipal League Legal Defense Fund authorized the Municipal League’s participation in this matter. The Legal Defense Fund represents the Municipal League’s interests in litigation holding statewide ramifications for its member municipalities. Petitioner-Appellant, the City of Mt. Pleasant, (the “City”), is one such member.

In the early 1990s, the City undertook a broad economic development effort which it termed “Project 2000.” As part of the project, the City acquired more than 300 acres of vacant land, and began platting, developing, marketing and selling the land with an eye toward encouraging economic growth and, ultimately, expanding its tax base. When the City Assessor placed certain Project 2000 parcels on the tax rolls, the City objected, claiming an exemption under §7m of the General Property Tax Act, MCL §211.7m.

In an administrative proceeding below, the Michigan Tax Tribunal rejected the City’s claim. The tribunal erroneously held that property owned by a municipality and used to promote economic development does not qualify as tax exempt property under §7m. In concluding that “holding the property for future economic or housing development to satisfy perceived economic or housing needs within the municipality is not a current and present use of the property for a public purpose,” the tribunal read additional terms into the statute and mischaracterized both the nature of the City’s use and the legitimacy of its public purpose.

The Court of Appeals upheld the Tax Tribunal's ruling and held that the City-owned land was not exempt from taxation. Applying a narrow construction to the exemption, the Court of Appeals recognized that economic development is a public purpose, but then held that because this was not a specific statutory economic development program it was not exempt from property taxation under §7m. The Court of Appeals relied on *Municipal Employees Retirement Systems of Michigan v Delta Charter Twp*, 266 Mich App 510; 702 NW2d 665 (2005) and *Traverse City v East Bay Twp*, 190 Mich 327, 330-331; 157 NW 85 (1916), for the notion that only present public uses are tax exempt.

The Court of Appeals decision will have a sweeping impact on municipalities across the state upsetting the current system of taxation of municipal land and possibly even forcing municipalities to increase taxes to pay for services that would otherwise have to be cut when funds are diverted to pay property taxes for municipally-owned land. This Court has noted the well-settled doctrine against taxing municipal land used for public purposes:

The doctrine has been pretty well settled in this State and elsewhere that property owned by the State or by the United States is not subject to taxation unless so provided by positive legislation. And municipalities and State agencies are included in this class when their property is used for public purposes. The reason which supports this doctrine is that, if taxes were permitted to be levied against the sovereign, it would be necessary to tax itself in order to raise money to pay over to itself. This would be an idle thing to do. *People, ex rel Auditor General v Ingalls*, 238 Mich 423, 425; 213 NW 713 (1927).

Upholding the Court of Appeals decision would violate this doctrine and would be detrimental to Michigan's municipalities for several reasons. It could force the City and hundreds of other municipalities statewide to place land it previously thought to be exempt on its tax rolls. Adding unforeseen tax expenditures to already constrained budgets will make it more costly for municipalities to deliver basic services to their residents, and could ultimately force



municipalities to abandon plans to improve the public's health and welfare. In addition to land purchased by municipalities for economic development purposes, the Court of Appeals ruling will also affect land planned for future park purposes or even future road or sewer projects. In essence, the Court of Appeals opinion will penalize communities that have the foresight to purchase land for future projects when it is available rather than waiting until it is time to construct the project and possibly having to condemn the land. Clearly, this could not have been what the Legislature intended when it enacted the exemption provided by §7m of the General Property Tax Act.

**B. Standard of Review – *de novo***

The primary issue in this appeal involves the proper statutory construction of MCL 211.7m. "Issues of statutory interpretation are questions of law and are therefore reviewed *de novo*." *Oade v Jackson Nat'l Life*, 465 Mich 244, 250, 632 NW2d (2001). Article 6, § 28 of the Michigan Constitution of the 1963 governs review of Tax Tribunal decisions, it provides:

In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.

Absent fraud, appellate review of Tax Tribunal decisions is limited to whether the tribunal made an error of law or adopted a wrong principle. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991); *Curis Big Boy, Inc v Dep't of Treasury*, 206 Mich App 139, 143, 520 NW2d 369 (1994).

**C. Plain Text Reading of MCL 211.7m**

Section 7m of the General Property Tax Act provides:

Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public

purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition. MCL 211.7m

The text of this section clearly provides that municipal property used for public purposes is exempt from taxation. In addition, it provides that "property...being acquired [by a governmental agency that is essentially a municipality or combination of multiple municipalities used to carry out a public purpose] is exempt." Three aspects of this sentence show that the Legislature intended the exemption to be much broader than that allowed by the Court of Appeals in this case. First, the fact that the statute refers to land "being acquired" clearly shows that the Legislature intended to include assemblage of land for economic development as well as other projects. Second, the statute contains no "current use" requirement on land "being acquired" by an agency or political subdivision if the agency or subdivision is used to carry out a public purpose. Third, the phrase "to carry out a public purpose" indicates acknowledgement by the legislature that public use can be an ongoing or evolving process, not a static condition. Application of a temporal restriction to the purpose of an agency or political subdivision is nonsensical. Thus, the plain text of the second sentence of §7m supports the argument that the Court of Appeals current use requirement is not in line with the statutory language, nor is it in line with the purpose of the statute or basic understanding of the long-lead timing of traditional or economic development public projects.

In addition, it is clear from subsequent amendments to the General Property Tax Act that the Legislature knows how to recover taxes from property if it wishes to do so. For example, when the Legislature added §181, it did not change the tax-exempt status of the property, but instead imposed a use tax on private for profit users of tax-exempt land. See discussion of §181 below. Had the Legislature intended the result of the Court of Appeals decision, it certainly could have added language to that effect in §7m.

**D. Practical Effect of the Court of Appeals Decision**

The Tax Tribunal made an error of law in requiring a current use for a public purpose. The Court of Appeals upheld that erroneous ruling by reading a temporal requirement into the phrase "used for a public purpose." The City and *Amicus Curiae* Charter County of Wayne have explained why this ruling is erroneous as a matter of law. The League agrees with those arguments and will not reiterate them here. However, the League would like to bring to the Court's attention the practical effect of the Court of Appeals decision. To understand the full impact of the decision, other sections of the General Property Tax Act must be considered as well as examples of impacts on specific types of projects.

**1. Relation to Other Sections of the General Property Tax Act**

The Court of Appeals decision must be looked at in the context of the remainder of the General Property Tax Act and the effect it will have on the entire system of taxation of municipal property. The Legislature's enactment of §181 of the General Property Tax Act reinforces the argument that the Court of Appeals narrow reading of the exemption is contradictory to the Legislature's intent. The Legislature clearly knew how to make this land taxable if they wanted to narrow the public purpose exemption. The Legislature intended to create a broad exemption for municipally-owned land in §7m; and in §181 the Legislature provided for payment of a use tax on government-owned real property being used by private for profit entities. By shifting the

burden of taxation to the for profit lessee of government-owned land, the Legislature emphasized its intention that governmental entities are not normally subject to *ad valorem* property taxation.

Section 181 of the General Property Tax Act provides:

(1) Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

Section 181 requires a lessee of tax-exempt real property to pay taxes as if the lessee owned the property. The purpose of this section "is to insure that persons leasing normally tax-exempt property for profit-making purposes do not secure an unfair advantage by avoiding taxation."

*Gaylord v Beckett*, 378 Mich 273, 302; 144 NW2d 460 (1966), citing *United States v City of Detroit*, 345 Mich 601, 610; 77 NW2d 79 (1956) *Township of Muskegon v Continental Motors Corporation*, 346 Mich 218, 223; 77 NW2d 799 (1956); and *Rockwell Spring & Axle Company v Romulus Township*, 365 Mich 632, 637; 114 NW2d 166 (1962). Section 181 operates to even the playing field by forcing lessees and users for profit of tax-exempt property to shoulder the same burden as other for profit businesses using land that is not tax-exempt.

Application of this section is difficult in light of the Court of Appeals decision. If economic development is only a public purpose when it is a present use, is there a time when purchasing and leasing land is no longer a public purpose? For example, Village Y purchases land and installs infrastructure for an industrial park. Village Y then leases the land to private for profit entities that construct buildings and operate businesses. If the assembling of the land is not a current use for purposes of determining whether it is a public purpose exempt from taxation, is leasing the land a current use for such purposes? Is there a point where economic development

ceases to be a current use for determination of whether it is a public purpose? Once the private for profit entities have signed the leases, is the economic development over?

This section functions to shift the burden to the private for profit entity, but does not require that entity to pay *ad valorem* property taxes, instead, it imposes a use tax on the privilege of using tax-exempt property calculated based on the value of the property. *See United States v Detroit*, supra at 604-608. The property technically remains tax-exempt under this provision. There is no provision in the General Property Tax Act that shifts property tax responsibility from a municipality to a lessee if the property is taxable. Thus, if the Court of Appeals ruling is allowed to stand, municipalities will be forced to make tax payments currently being made by private for profit corporations.

## 2. Effect on Specific Types of Municipal Projects

If the Court of Appeals ruling is allowed to stand, the effect on Michigan municipalities will be devastating. Municipalities across the state will be forced to abandon economic development plans and sell municipally-owned property purchased or acquired for future projects such as parks or roads. By adding a current use requirement to "public purpose" the Court of Appeals not only stifled economic development, but also traditional public projects.

### a. Economic Development Projects

Many municipalities in this state have been working to encourage economic development or redevelopment projects. Economic development cannot be done the day before a major employer comes to town; it often takes years to assemble land, build infrastructure and woo new employers to an area. The Court of Appeals current use requirement is contrary to the "if you build it, they will come" premise underlying economic development. This Court's ruling in *Wayne Co v Hathcock*, 471 Mich 445; 684 NW2d 765 (2005), assured municipalities working on economic development projects that purchasing land for the purpose of assembling it and selling

it to private developers was a valid public purpose. In *Hathcock* this Court eloquently described public purpose within the meaning of MCL 213.23:

The pursuit of the goals cited above<sup>[1]</sup> is within the scope of Wayne County's powers, and each goal certainly advances a "public purpose." A "public purpose" has been defined as that which "has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose." A transition from a declining rustbelt economy to a growing, technology-driven economy would, no doubt, promote prosperity and general welfare. Consequently, the county's goal of drawing commerce to metropolitan Detroit and its environs by converting the subject properties to a state-of-the-art technology and business park is within this definition of a "public purpose." *Id.* at 462, internal citations omitted.

In *Hathcock* this Court held that economic development is a public purpose. However, the Court of Appeals ruling in the case at bar confuses the constitutional standard for public use related to eminent domain with the statutory meaning of "public purpose" or, in this case, the statutory meaning of "used for a public purpose." This case presents this Court with an opportunity to reaffirm that economic development is a public purpose within the meaning of MCL 213.23, as well as within MCL 211.7m; it also presents the Court with an opportunity to further clarify and reaffirm the distinction between the constitutional standard for public use and the statutory meaning of public purpose outlined in *Hathcock*. In addition, hearing this case in conjunction with *MERS v Charter Township of Delta* (Docket No. 129041), lv gtd \_\_\_\_ Mich \_\_\_\_ (1/31/06), allows this Court to take the distinction a step further by comparing two different sets of statutory language.

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<sup>[1]</sup> The "goals cited above" are "(1) the creation of jobs for its citizens, (2) the stimulations of private investment and redevelopment in the county to insure a healthy and growing tax base so that the county can fund and deliver critical public services, (3) stemming the tide of disinvestment and population loss, and (4) supporting development opportunities which would otherwise remain unrealized."

b. Traditional Public Projects – Roads, Sewer Systems, Parks

The Court of Appeals current use requirement will not only have a chilling effect on economic development, but it will penalize communities with enough foresight to purchase land in advance of construction for traditional public projects, such as roads and sewer systems, as well as those that acquire land that may not have been in the master plan, such as land donated for park purposes.

Many municipalities have long term master plans. When property that the municipality plans to use in the future becomes available, it makes sense (at least before the Court of Appeals opinion it made sense) for the community to purchase the land while it is on the market and hold it until the funds are available to complete the project. Under the Court of Appeals ruling, municipalities holding land for future projects will be required to pay property tax on that land. Thus, rather than purchasing land as it becomes available, municipalities will wait until they are ready to begin project construction to start purchasing land, running the risk that they might have to condemn land that may have been for sale at an earlier time. For example, City X anticipates large amounts of growth in the next ten years and has a master plan to build a ring road around the community to help with traffic flow. The plan is to build the road in 2012. In the spring of 2006 a large parcel in the path of the proposed road becomes available and City X can purchase the parcel for \$100,000. However, under the Court of Appeals ruling, City X will have to pay property taxes on that parcel until 2012. At the full millage rate of 55 mills, the taxes would amount to \$5,500 per year or \$33,000 by 2012.<sup>1</sup> In this time of tight budgets, City X decides to wait until it is ready to begin construction to try to purchase the land. In 2012, when City X is

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<sup>1</sup> While some might argue that the City would essentially be paying the tax to itself and would receive this money upon collection of the taxes, it is important to note that taxes are paid to multiple tax collecting units in any city or village, including, at a minimum, the county and the state, thus the City would only receive a portion of the taxes paid on the parcel.

ready to purchase the land, there is a new home on it and the new owner refuses to sell for less than \$300,000 or refuses to sell, period. City X is now forced to pay the owner's price or initiate condemnation proceedings. Thus, the Court of Appeals ruling not only costs taxpayers more by forcing them to pay taxes on municipally-owned property, it will cost them much more in project construction and condemnation costs because municipalities will delay purchasing land for public projects, hoping that they can purchase it later at the same cost while avoiding paying taxes on it in the interim.

In addition to the stifling effect on planned community development, the Court of Appeals ruling will topple plans for land received by municipalities that was not necessarily part of the master plan. Residents who wish to have their land preserved often donate that land to the municipality in which they reside for use as a park. These donations often contain deed restrictions allowing the land to be used only for the purpose designated. In most cases, if the land is not used for the designated purpose, it reverts to the donor or the donor's estate. Often municipalities, upon receiving such donations, lack the funds to make necessary improvements to the property and, thus, must hold the property unused until the requisite funds are accumulated. If municipalities were required to pay property taxes on these lands, it would not make economic sense in most cases for the municipality to hold onto the land. Thus, under the Court of Appeals decision, municipalities will be forced with the difficult choice of turning down free land or paying taxes on it until they have the fund balance necessary to transform the land to its intended use. In other words, the Court of Appeals ruling will force communities to turn down free land if they cannot afford to turn it into a park or other public purpose project immediately.



### 3. Greenspace and Wetlands

One of the newest trends in community development and planning is the preservation of greenspace to promote economic development within the community and curb sprawl at and beyond the fringe of the urban area. Many cities and villages across the state are purchasing land and holding it as greenspace, recognizing the value that greenspace has in urban environments. In addition, communities are purchasing and preserving wetlands to protect water regeneration and wildlife. Would holding land as greenspace fall within the Court of Appeals requirement that a public purpose be a current use? Does recognition of fallow land as valuable to the health and welfare of a city or village constitute a present use of the property? If it does, does this negate entirely the idea that there must be a current use? Could future parks or roads be designated as current greenspace and be exempt from taxation under §7m? Does protection of wetlands for preservation of water quality and ecosystem health satisfy the Court of Appeals current use requirement?

## **V. CONCLUSION**

If allowed to stand, the Court of Appeals ruling will have a stifling effect on economic development in this state. Economic development, by definition, takes time and the Court of Appeals ruling, while purporting to recognize that this Court had recognized that economic development is a public purpose, eviscerated the ability of every municipality in this state to engage in economic development. In fact, the economic disincentive it creates will discourage municipalities from actively participating in and encouraging economic development as well as traditional public projects, such as roads, sewer systems and parking lots. Municipalities will be forced to divest land acquired for economic development projects and land being held for any future projects.

The Court of Appeals opinion injected confusion into an otherwise clear and unambiguous statute. Much time, energy and taxpayer money will be spent in sorting out what is and is not a current use for purposes of determining whether something is a public purpose within the meaning of MCL 211.7m. The entire system of property taxation related to municipally-owned land in this state will be turned on its head if the Court of Appeals decision is left in tact. In addition to spending time and money figuring out whether municipalities are responsible for taxes on land that they own under this new system, municipalities may be forced to pay taxes on land that currently has a private, for profit entity paying a use tax. This is not in line with the plain meaning of the statute, nor is it in line with the principle that tax exemptions in favor of municipalities must be construed broadly.

**VI. RELIEF**

Wherefore, the Michigan Municipal League Legal Defense Fund respectfully requests that this Court reverse the Court of Appeals, hold that municipally-owned parcels held for public purposes are "used for public purposes" and are exempt from taxes under §7m, and grant such other relief as is warranted in law and equity.

Respectfully submitted,

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